



BILLING CODE 4810-02

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB33

Civil Monetary Penalty Adjustment and Table

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is amending the regulations under the Bank Secrecy Act to adjust the maximum amount or range, as set by statute, of certain civil monetary penalties within its jurisdiction to account for inflation. This action is being taken to implement the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: Effective Date: August 1, 2016.

Comment date: Written comments on this Interim Final Rulemaking must be submitted on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506-AB33, by any of the following methods:

- Federal E-rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506-AB33 in the submission. Refer to Docket Number FINCEN-2014-0005.

- Mail: FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AB33

in the body of the text.

Please submit comments by one method only. Comments submitted in response to this interim final rulemaking will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: The public dockets for FinCEN can be found at Regulations.gov. Federal Register notices published by FinCEN are searchable by docket number, RIN, or document title, among other things, and the docket number, RIN, and title may be found at the beginning of the notice. FinCEN uses the electronic, Internet-accessible dockets at Regulations.gov as their complete, official-record docket; all hard copies of materials that should be in the docket, including public comments, are electronically scanned and placed in the docket. In general, FinCEN will make all comments publicly available by posting them on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825 or e-mail frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, (“FCPIA Act”), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”), requires each Federal agency to adjust its civil monetary penalties within its jurisdiction for inflation annually. Specifically, the FCPIA Act now requires agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final

rulemaking, and to make subsequent annual adjustments for inflation. The adjustment is based on the formula described in section 5(b) of the FCPIA Act. Increases are rounded to the nearest multiple of \$1.

To calculate the catch-up adjustment, agencies must identify, for each penalty subject to the FCPIA Act, the year and corresponding amount(s) for which the maximum penalty or range of minimum and maximum penalties was established or last adjusted, whichever is later. Agencies will adjust the penalty amount or range of penalty amounts based on the Consumer Price Index for all Urban Consumers (“CPI-U”) for the month of October 2015 using an inflation factor, or multiplier, that reflects the CPI-U increase for the year in which the maximum penalty or range of penalties was established or last adjusted.¹ For the first penalty adjustment after the effective date of the 2015 Act, the amount of the increase shall not exceed 150 percent of the amount of a civil monetary penalty on November 2, 2015, the date of the enactment of the 2015 Act.

Subsequent annual inflation adjustments will be based on any percentage change between the October CPI-U preceding the date of the adjustment, and the prior year's October CPI-U.

FinCEN is authorized to impose civil monetary penalties for violations of the Bank Secrecy Act and its implementing regulations. Several of those penalties, such as the penalty under 31 U.S.C. 5321(a)(2), are not subject to adjustment under the FCPIA Act because they lack a stated dollar amount and are instead written solely as

¹ OMB Memorandum M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, February 24, 2014 sets forth inflation factors. See, <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>

functions of violations. The penalties subject to adjustment under the FCPIA Act are as follows:

- 12 U.S.C. 1829b(j), relating to recordkeeping violations for funds transfers. The \$10,000 penalty amount set out in 12 U.S.C. 1829b(j) was last adjusted by statute in 1988. The inflation factor for 1988 is 1.97869. Multiplying the penalty amount of \$10,000 by the inflation factor of 1.97869 results in an inflation adjusted maximum penalty amount of \$19,787, when rounded to the nearest dollar.
- 12 U.S.C. 1955, relating to willful or grossly negligent recordkeeping violations. The \$10,000 penalty amount set out in 12 U.S.C. 1955 was last adjusted by statute in 1988. The inflation factor for 1988 is 1.97869. Multiplying the penalty amount of \$10,000 by the inflation factor of 1.97869 results in an inflation adjusted maximum penalty amount of \$19,787, when rounded to the nearest dollar.
- 31 U.S.C. 5318(k)(3)(C), relating to failures to terminate correspondent relationships with a foreign bank. The \$10,000 penalty amount set out in 31 U.S.C. 5318(k)(3)(C) was last adjusted by statute in 2001. The inflation factor for 2001 is 1.33842. Multiplying the current maximum penalty amount of \$10,000 by the inflation factor of 1.33842 results in an inflation-adjusted maximum penalty amount of \$13,384, when rounded to the nearest dollar.
- 31 U.S.C. 5321(a)(1), relating to willful violations of Bank Secrecy Act requirements. The minimum and maximum amounts of \$25,000 and

\$100,000 set out in 31 U.S.C. 5321(a)(1) were last adjusted by statute in 1986. The inflation factor for 1986 is 2.15628. Multiplying the current minimum and maximum penalty amounts of \$25,000 and \$100,000 by the inflation factor of 2.15628 results in an inflation-adjusted range of minimum and maximum penalty amounts of \$53,907 and \$215,628, respectively, when rounded to the nearest dollar.

- 31 U.S.C. 5321(a)(5)(B)(i), relating to non-willful violations of foreign financial agency transactions. The \$10,000 amount set out in 31 U.S.C. 5312(a)(5)(B)(i) was last adjusted by statute in 2004. The inflation factor for 2004 is 1.24588. Multiplying the current maximum penalty amount of \$10,000 by the inflation factor of 1.24588 results in an inflation-adjusted maximum penalty of \$12,459, when rounded to the nearest dollar.
- 31 U.S.C. 5321(a)(5)(C), relating to willful violations of foreign financial agency transactions. The \$100,000 amount set out in 31 U.S.C. 5321(a)(5)(C) was last adjusted by statute in 2004. The inflation factor for 2004 is 1.24588. Multiplying the current maximum penalty amount of \$100,000 by the inflation factor of 1.24588 results in an inflation-adjusted maximum penalty amount of \$124,588, when rounded to the nearest dollar.
- 31 U.S.C. 5321(a)(6)(A), relating to negligent violations by a financial institution or non-financial trade or business. The \$500 amount set out in 31 U.S.C. 5321(a)(6)(A) was last adjusted by statute in 1986. The inflation factor for 1986 is 2.15628. Multiplying the current maximum

penalty amount of \$500 by the inflation factor of 2.15628 results in an inflation-adjusted maximum penalty amount of \$1,078, when rounded to the nearest dollar.

- 31 U.S.C. 5321(a)(6)(B), relating to a pattern of negligent activity by a financial institution or non-financial trade or business. The \$50,000 penalty amount set out in 31 U.S.C. 5321(a)(6)(B) was last adjusted by statute in 1992. The inflation factor for 1992 is 1.67728. Multiplying the current maximum penalty amount of \$50,000 by the inflation factor of 1.67728 results in an inflation-adjusted maximum penalty amount of \$83,864, when rounded to the nearest dollar.
- 31 U.S.C. 5321(a)(7), relating to violations of due diligence requirements for private banking accounts or correspondent bank accounts involving foreign persons, the prohibition on correspondent accounts for shell banks, and any special measure. The \$1,000,000 amount set out in 31 U.S.C. 5321(a)(7) was last adjusted by statute in 2001. The inflation factor for 2001 is 1.33842. Multiplying the current maximum penalty amount of \$1,000,000 by the inflation factor of 1.33842 results in an inflation-adjusted maximum penalty amount of \$1,338,420, when rounded to the nearest dollar.
- 31 U.S.C. 5330(e), relating to the failure to register as a money transmitting business. The \$5,000 penalty amount set out in 31 U.S.C. 5330(e) was last adjusted by statute in 1994. The inflation factor for 1994 is 1.59089. Multiplying the current penalty amount of \$5,000 by the

inflation factor of 1.59089 results in an inflation-adjusted penalty amount of \$7,954, when rounded to the nearest dollar.

The adjusted civil penalty amounts described in this rule are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Amendments. Therefore, violations occurring on or before November 2, 2015, and assessments made prior to August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts set forth in FinCEN's existing regulations.

II. Request for Comment

FinCEN invites comment on any and all aspects of the interim final rule.

III. Effective Date

The FCPIA Act mandates that inflation adjustments to civil monetary penalties be published through an interim final rulemaking to be published by July 1, 2016, and that the inflation-adjusted civil monetary penalties take effect not later than August 1, 2016.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). See 5 U.S.C. 601(2). Because the FCPIA Act mandates that this rulemaking be an interim final rule, FinCEN is not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim final rule.

V. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (“Unfunded Mandates Act”) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that this interim final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more. Accordingly, FinCEN has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

VI. Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim final rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, Part 1010 of Chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010 – GENERAL PROVISIONS

1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 701. Pub. L. 114-74, 129 Stat. 599.

2. Amend §1010.820 by adding paragraph (i) to read as follows:

§ 1010.820 Civil penalty.

* * * * *

(i) For penalties that are assessed after August 1, 2016, see § 1010.821 for rules relating to the maximum amount of the penalty.

3. Add § 1010.821 to read as follows:

§ 1010.821 Penalty adjustment and table.

(a) Inflation adjustments. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, (“FCPIA Act”), as further

amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, FinCEN has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil monetary penalty provided by law within its jurisdiction that is subject to the FCPIA Act. The adjusted civil monetary penalty amounts replace the amounts published in the statutes authorizing the assessment of penalties.

(b) Maximum civil monetary penalties. The statutory penalty provisions and their adjusted maximum amounts or range of minimum and maximum amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts or range of minimum and maximum amounts. These maximum penalty amounts do not, however, limit the total amount of a penalty in the case of a penalty that may be imposed for each day a violation continues.

Table 1 of § 1010.821 - Penalty Adjustment and Table

U.S. Code Citation	Civil Monetary Penalty Description	Statutory Penalties as last amended by Statute	New Maximum Penalty Amounts or Range of Minimum and Maximum Penalty Amounts for penalties assessed after 8/1/2016
12 U.S.C. 1829b(j).....	Relating to Recordkeeping Violations For Funds Transfers	\$10,000	\$19,787
12 U.S.C. 1955.....	Willful or Grossly Negligent Recordkeeping Violations	\$10,000	\$19,787
31 U.S.C. 5318(k)(3)(C)...	Failure to Terminate Correspondent Relationship with Foreign Bank	\$10,000	\$13,384
31 U.S.C. 5321(a)(1).....	General Civil Penalty Provision for Willful Violations of Bank Secrecy Act Requirements	\$25,000 - \$100,00	\$53,907 - \$215,628
31 U.S.C. 5321(a)(5)(B)(i).	Foreign Financial Agency Transaction – Non-Willful Violation of Transaction	\$10,000	\$12,459
31 U.S.C. 5321(a)(5)(C)....	Foreign Financial Agency Transaction – Willful Violation of Transaction	\$100,000	\$124,588
31 U.S.C. 5321(a)(6)(A)...	Negligent Violation by Financial Institution or Non-Financial Trade or Business	\$500	\$1,078
31 U.S.C. 5321(a)(6)(B)....	Pattern of Negligent Activity by Financial Institution or Non-Financial Trade or Business	\$50,000	\$83,864

31 U.S.C. 5321(a)(7).....	Violation of Certain Due Diligence Requirements, Prohibition on Correspondent Accounts for Shell Banks, and Special Measures	\$1,000,000	\$1,338,420
31 U.S.C. 5330(e).....	Civil Penalty for Failure to Register as Money Transmitting Business	\$5,000	\$7,954

Dated: June 28, 2016

Jamal El-Hindi
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Financial Crimes Enforcement Network

[FR Doc. 2016-15653 Filed: 6/29/2016 8:45 am; Publication Date: 6/30/2016]